



February 9, 2005

HOUSE BILL No. 1639

DIGEST OF HB 1639 (Updated February 2, 2005 4:07 pm - DI 103)

Citations Affected: IC 4-13; IC 6-2.5; IC 6-3.1; IC 20-12; IC 22-4.1; noncode.

Synopsis: Film production tax incentives. Authorizes the use of state and university owned property free of charge as locations for making motion pictures. Provides that transactions involving tangible personal property are exempt from sales tax if the person acquiring the property acquires it for the person's direct use in the direct production of a motion picture or audio production. Provides that costs associated with the purchase of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions are qualified investments for purposes of the capital investment tax credit statewide and the Hoosier business investment tax credit. Provides a state tax credit for expenditures that are made in Indiana and directly related to the production and postproduction of a motion picture or audio production. Provides that certain tax credits related to the production of motion pictures or audio productions are transferable. Authorizes the department of workforce development to fund job training in the film production industry from the state workforce development fund. Excludes obscene motion pictures from various incentives.

Effective: July 1, 2005; January 1, 2006.

Lutz J, Denbo, Borrer, Hinkle

January 19, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.

February 8, 2005, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

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February 9, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1639

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13-1-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 4. The department shall, subject to
3 this chapter, do the following:

4 (1) Execute and administer all appropriations as provided by law,
5 and execute and administer all provisions of law that impose
6 duties and functions upon the executive department of
7 government, including executive investigation of state agencies
8 supported by appropriations and the assembly of all required data
9 and information for the use of the executive department and the
10 legislative department.

11 (2) Supervise and regulate the making of contracts by state
12 agencies.

13 (3) Perform the property management functions required by
14 IC 4-20.5-6.

15 (4) Assign office space and storage space for state agencies in the
16 manner provided by IC 4-20.5-5.

17 (5) Maintain and operate the following for state agencies:

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- 1 (A) Central duplicating.
- 2 (B) Printing.
- 3 (C) Machine tabulating.
- 4 (D) Mailing services.
- 5 (E) Centrally available supplemental personnel and other
- 6 essential supporting services.
- 7 (F) Information services.
- 8 (G) Telecommunication services.
- 9 The department may require state agencies to use these general
- 10 services in the interests of economy and efficiency. The general
- 11 services rotary fund, the telephone rotary fund, and the data
- 12 processing rotary fund are established through which these
- 13 services may be rendered to state agencies. The budget agency
- 14 shall determine the amount for each rotary fund.
- 15 (6) Control and supervise the acquisition, operation, maintenance,
- 16 and replacement of state owned vehicles by all state agencies. The
- 17 department may establish and operate, in the interest of economy
- 18 and efficiency, a motor vehicle pool, and may finance the pool by
- 19 a rotary fund. The budget agency shall determine the amount to
- 20 be deposited in the rotary fund.
- 21 (7) Promulgate and enforce rules relative to the travel of officers
- 22 and employees of all state agencies when engaged in the
- 23 performance of state business. These rules may allow
- 24 reimbursement for travel expenses by any of the following
- 25 methods:
- 26 (A) Per diem.
- 27 (B) For expenses necessarily and actually incurred.
- 28 (C) Any combination of the methods in clauses (A) and (B).
- 29 The rules must require the approval of the travel by the
- 30 commissioner and the head of the officer's or employee's
- 31 department prior to payment.
- 32 (8) Administer IC 4-13.6.
- 33 (9) Prescribe the amount and form of certified checks, deposits,
- 34 or bonds to be submitted in connection with bids and contracts
- 35 when not otherwise provided for by law.
- 36 (10) Rent out, with the approval of the governor, any state
- 37 property, real or personal:
- 38 (A) not needed for public use; or
- 39 (B) for the purpose of providing services to the state or
- 40 employees of the state;
- 41 the rental of which is not otherwise provided for or prohibited by
- 42 law. Property may not be rented out under this subdivision for a

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term exceeding ten (10) years at a time. However, if property is rented out for a term of more than four (4) years, the commissioner must make a written determination stating the reasons that it is in the best interests of the state to rent property for the longer term. This subdivision does not include the power to grant or issue permits or leases to explore for or take coal, sand, gravel, stone, gas, oil, or other minerals or substances from or under the bed of any of the navigable waters of the state or other lands owned by the state.

(11) Have charge of all central storerooms, supply rooms, and warehouses established and operated by the state and serving more than one (1) agency.

(12) Enter into contracts and issue orders for printing as provided by IC 4-13-4.1.

(13) Sell or dispose of surplus property under IC 5-22-22, or if advantageous, to exchange or trade in the surplus property toward the purchase of other supplies, materials, or equipment, and to make proper adjustments in the accounts and inventory pertaining to the state agencies concerned.

(14) With respect to power, heating, and lighting plants owned, operated, or maintained by any state agency:

(A) inspect;

(B) regulate their operation; and

(C) recommend improvements to those plants to promote economical and efficient operation.

(15) Administer, determine salaries, and determine other personnel matters of the department of correction ombudsman bureau established by IC 4-13-1.2-3.

(16) Adopt policies and standards for making state owned property reasonably available to be used free of charge as locations for making motion pictures.

SECTION 2. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 39. (a) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for the person's direct use in the:**

(1) direct production; or

(2) direct postproduction;

of a motion picture or an audio production in Indiana.

(b) As used in this section, "motion picture or audio production" means a:

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- (1) feature length film;
- (2) video;
- (3) television series;
- (4) commercial;
- (5) music video or an audio recording; or
- (6) corporate production;

for any combination of theatrical, television, or other media viewing or as a television pilot. The term does not include a motion picture that is obscene (as described in IC 35-49-2-1) or television coverage of news or athletic events.

(c) For purposes of this section, the following are not considered to be directly used in the direct production or direct postproduction of a motion picture:

- (1) Food services.
- (2) A vehicle used to transport actors and crew.
- (3) Gasoline used in a vehicle used to transport actors and crew.
- (4) Lodging.

SECTION 3. IC 6-3.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 1.5. Sale or Assignment of Tax Credits

Sec. 1. As used in this chapter, "qualified taxpayer" means a taxpayer that:

- (1) makes a qualified investment described in IC 6-3.1-13.5-3;
- (2) makes a qualified investment described in IC 6-3.1-26-8(8); or
- (3) incurs qualified expenses (as defined in IC 6-3.1-29-5).

Sec. 2. Notwithstanding any other provision, a qualified taxpayer:

- (1) that is entitled to a tax credit under this article for a qualified investment or a qualified expense enumerated in section 1 of this chapter; and
- (2) for which the tax credit or any part of the tax credit exceeds the qualified taxpayer's tax liability, after the application of any other credits that are claimed by the taxpayer;

may, after December 31, 2005, sell, assign, convey, or otherwise transfer the unused part of the tax credit that exceeds the qualified taxpayer's tax liability.

Sec. 3. A sale, an assignment, a conveyance, or a transfer of a tax credit under this chapter must be in writing, and both the

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1 qualified taxpayer and the person to which the credit is sold,
 2 assigned, conveyed, or transferred must report the sale,
 3 assignment, conveyance, or transfer on their state tax returns in
 4 the manner prescribed by the department.

5 **Sec. 4. The department shall adopt rules under IC 4-22-2 that**
 6 **are necessary to administer this chapter.**

7 SECTION 4. IC 6-3.1-13.5-3 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 3. As used in this
 9 chapter, "qualified investment" means the amount of the taxpayer's
 10 expenditures for:

- 11 (1) the purchase of new manufacturing or production equipment;
- 12 (2) the purchase of new computers and related equipment;
- 13 (3) costs associated with the modernization of existing
- 14 manufacturing facilities;
- 15 (4) onsite infrastructure improvements;
- 16 (5) the construction of new manufacturing facilities;
- 17 (6) costs associated with retooling existing machinery and
- 18 equipment; ~~and~~
- 19 (7) costs associated with the construction of special purpose
- 20 buildings and foundations for use in the computer, software,
- 21 biological sciences, or telecommunications industry; **and**
- 22 **(8) costs associated with the purchase of machinery,**
- 23 **equipment, or special purpose buildings used to make motion**
- 24 **pictures or audio productions (as defined in IC 6-2.5-5-39);**

25 that are certified by the department under section 10 of this chapter as
 26 being eligible for the credit under this chapter. ~~if the~~ Equipment,
 27 machinery, facilities improvements, facilities, buildings, or foundations
 28 **are described in subdivisions (1) through (7) must be** installed or
 29 used for a project having an estimated total cost of at least seventy-five
 30 million dollars (\$75,000,000) and in a county having a population of
 31 more than forty-three thousand (43,000) but less than forty-five
 32 thousand (45,000).

33 SECTION 5. IC 6-3.1-26-8 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 8. (a) As used in
 35 this chapter, "qualified investment" means the amount of the taxpayer's
 36 expenditures for:

- 37 (1) the purchase of new telecommunications, production,
- 38 manufacturing, fabrication, assembly, extraction, mining,
- 39 processing, refining, or finishing equipment;
- 40 (2) the purchase of new computers and related equipment;
- 41 (3) costs associated with the modernization of existing
- 42 telecommunications, production, manufacturing, fabrication,

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assembly, extraction, mining, processing, refining, or finishing facilities;

(4) onsite infrastructure improvements;

(5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;

(6) costs associated with retooling existing machinery and equipment; ~~and~~

(7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry; **and**

(8) costs associated with the purchase of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions (as defined in IC 6-2.5-5-39);

that are certified by the board under this chapter as being eligible for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 6. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Motion Picture and Audio Production Credit

Sec. 1. As used in this chapter, "commission" means the Indiana film commission established by IC 4-4-13-1.

Sec. 2. As used in this chapter, "motion picture or audio production" has the meaning set forth in IC 6-2.5-5-39.

Sec. 3. As used in this chapter, "motion picture or audio production company" means an entity engaged in the business of producing motion pictures or audio productions.

Sec. 4. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 5. As used in this chapter, "qualified expenses" means the amount of a motion picture or an audio production company's expenditures that are:

(1) made in Indiana to produce a motion picture or an audio production; and

(2) certified by the commission under this chapter as being

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eligible for the credit under this chapter.

Sec. 6. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 7. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or other entity that has state tax liability.

Sec. 8. (a) The total amount of a tax credit that may be claimed under this chapter for a taxable year equals thirty percent (30%) of the amount of qualified expenses incurred by the taxpayer in the taxable year.

(b) The taxpayer may carry forward any unused credit.

(c) The credit allowed under this chapter is not refundable.

Sec. 9. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 10. The commission shall certify that the taxpayer's expenditures are eligible for a tax credit under this chapter if the commission determines that the expenditures were:

- (1) made in Indiana; and
- (2) directly related to the production of a motion picture or an audio production.

Sec. 11. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. A taxpayer claiming a credit under this chapter shall attach a copy of the commission's certificate of verification to the income tax return that is filed for the taxable year for which the credit is claimed.

SECTION 7. IC 20-12-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) The Ball State University board of trustees, Indiana State University board of

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trustees, the trustees of Indiana University, the trustees of Purdue University, and the University of Southern Indiana board of trustees, each as to its respective institution, shall have the power and duty:

- (1) to govern the disposition and method and purpose of use of the property owned, used, or occupied by the institution, including the governance of travel over and the assembly upon the property;
- (2) to govern, by specific regulation and other lawful means, the conduct of students, faculty, employees, and others while upon the property owned, used, or occupied by the institutions;
- (3) to govern, by lawful means, the conduct of its students, faculty, and employees, wherever the conduct might occur, to the end of preventing unlawful or objectionable acts that seriously threaten the ability of the institution to maintain its facilities available for performance of its educational activities or that are in violation of the reasonable rules and standards of the institution designed to protect the academic community from unlawful conduct or conduct presenting a serious threat to person or property of the academic community;
- (4) to dismiss, suspend, or otherwise punish any student, faculty member, or employee of the institution who violates the institution's rules or standards of conduct, after determination of guilt by lawful proceedings;
- (5) to prescribe the fees, tuition, and charges necessary or convenient to the furthering of the purposes of the institution and to collect the prescribed fees, tuition, and charges;
- (6) to prescribe the conditions and standards of admission of students upon the bases as are in its opinion in the best interests of the state and the institution;
- (7) to prescribe the curricula and courses of study offered by the institution and define the standards of proficiency and satisfaction within the curricula and courses established by the institution;
- (8) to award financial aid to students and groups of students out of the available resources of the institution through scholarships, fellowships, loans, remissions of fees, tuitions, charges, or other funds on the basis of financial need, excellence of academic achievement, or potential achievement or any other basis as the governing board may find to be reasonably related to the educational purposes and objectives of the institution and in the best interest of the institution and the state;
- (9) to cooperate with other institutions to the end of better assuring the availability and utilization of its total resources and opportunities to provide excellent educational opportunity for all

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persons;

(10) to establish and carry out written policies for the investment of the funds of the institution in the manner provided by IC 30-4-3-3; ~~and~~

(11) to lease to any corporation, limited liability company, partnership, association, or individual real estate title to which is in the name of an institution or in the name of the state for the use and benefit of the leasing institution; **and**

(12) to adopt policies and standards for making property owned by the institution reasonably available to be used free of charge as locations for the production of motion pictures.

(b) A lease may be for such term and for such rental, either nominal or otherwise, as the board determines to be in the best interest of the institution. No lease shall be executed under this section for a term exceeding four (4) years unless the execution is approved by the governor and by the ~~state~~ budget agency. The universities shall be exempt from all property taxes on any real estate leased under this section, and the lessee shall be liable for property taxes on the leased real estate as if the real estate were owned by the lessee in fee simple, unless the lessee is a student living in university-owned facilities.

(c) This section shall not be construed to deny any tax exemption that a lessee would have under other laws if the lessee were the owner in fee simple of the real estate.

SECTION 8. IC 22-4.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. Money in the fund may be used for the following purposes at the discretion of the department, based upon the priorities necessary to achieve the department's goals:

(1) To build the capacity and strengthen the quality of services of programs offering basic skills services and having a substantial volunteer component, including staff and volunteer development, outreach, equipment, software, training materials, and community linkages.

(2) For workforce literacy programs providing essential and basic education skills training to raise skills and productivity in the workplace.

(3) For technical assistance to providers of workplace literacy and basic education to enhance the providers' capacity to link with employers and document productivity gains resulting from training.

(4) To establish a common data base, reporting system, and evaluation system related to workforce literacy and other

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incumbent worker programs, and to develop performance standards.

(5) To provide training for dislocated workers under IC 22-4-41.

(6) To provide training for workers who are at risk of becoming dislocated workers because of a lack of skills.

(7) To provide comprehensive job training and related services for economically disadvantaged, unemployed, and underemployed individuals, including recruitment, counseling, remedial education, vocational training, job development, job placement, and other appropriate services to enable each individual to secure and retain employment at the individual's maximum capacity.

(8) To attract federal funds in order to increase the resources available to carry out the purposes of this section.

(9) To provide comprehensive job training and related services, including recruitment, counseling, remedial education, vocational training, job development, job placement, and other appropriate services to individuals seeking employment in the film or audio production industry.

SECTION 9. [EFFECTIVE JANUARY 1, 2006] (a) IC 6-3.1-1.5 and IC 6-3.1-29, both as added by this act, apply to taxable years beginning after December 31, 2005.

(b) IC 6-3.1-13.5-3 and IC 6-3.1-26-8, both as amended by this act, apply to taxable years beginning after December 31, 2005.

SECTION 10. [EFFECTIVE JULY 1, 2005] (a) The Indiana department of administration shall, before January 1, 2006, adopt policies and standards under IC 4-13-1-4(16), as added by this act, for using state owned property as locations for making motion pictures.

(b) This SECTION expires January 2, 2006.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1639, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 30, after "property" insert **"reasonably"**.

Page 3, line 40, after "picture" insert **"or an audio production"**.

Page 3, line 41, delete "picture"" and insert **"picture or audio production""**.

Page 4, line 4, after "video" insert **"or an audio recording"**.

Page 4, between lines 17 and 18, begin a new paragraph and insert:
"SECTION 3. IC 6-3.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 1.5. Sale or Assignment of Tax Credits

Sec. 1. As used in this chapter, "qualified taxpayer" means a taxpayer that:

- (1) makes a qualified investment described in IC 6-3.1-13.5-3;**
- (2) makes a qualified investment described in IC 6-3.1-26-8(8); or**
- (3) incurs qualified expenses (as defined in IC 6-3.1-29-5).**

Sec. 2. Notwithstanding any other provision, a qualified taxpayer:

- (1) that is entitled to a tax credit under this article for a qualified investment or a qualified expense enumerated in section 1 of this chapter; and**
- (2) for which the tax credit or any part of the tax credit exceeds the qualified taxpayer's tax liability, after the application of any other credits that are claimed by the taxpayer;**

may, after December 31, 2005, sell, assign, convey, or otherwise transfer the unused part of the tax credit that exceeds the qualified taxpayer's tax liability.

Sec. 3. A sale, an assignment, a conveyance, or a transfer of a tax credit under this chapter must be in writing, and both the qualified taxpayer and the person to which the credit is sold, assigned, conveyed, or transferred must report the sale, assignment, conveyance, or transfer on their state tax returns in the manner prescribed by the department.

Sec. 4. The department shall adopt rules under IC 4-22-2 that are necessary to administer this chapter."

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Page 4, line 35, after "pictures" insert "**or audio productions**".
 Page 5, line 25, after "pictures" insert "**or audio productions**".
 Page 5, line 33, after "Picture" insert "**and Audio**".
 Page 5, line 36, after "picture" insert "**or audio production**".
 Page 5, line 38, after "picture" insert "**or audio**".
 Page 5, line 40, after "pictures" insert "**or audio productions**".
 Page 6, line 7, after "picture" insert "**or an audio**".
 Page 6, line 9, after "picture" insert "**or an audio production**".
 Page 6, line 41, after "picture" insert "**or an audio production**".
 Page 8, line 19, after "institution" insert "**reasonably**".
 Page 9, line 27, after "film" insert "**or audio**".
 Page 9, line 28, after "(a)" insert "**IC 6-3.1-1.5 and**".
 Page 9, line 28, after "IC 6-3.1-29," insert "**both**".
 Page 9, line 29, delete "applies" and insert "**apply**".
 Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1639 as introduced.)

BORROR, Chair

Committee Vote: yeas 12, nays 0.

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